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EXAMINER				
STEELE, AMBER D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US_cipkop@gsk.com

Office Action Summary

Application No.

09/888,313

Applicant(s)

TOMLINSON ET AL.

Examiner

AMBER D. STEELE

Art Unit

1639

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 56-68, 78-86, 118 and 119 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 56-68, 78-86, 118 and 119 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. The claim amendment received on June 3, 2008 amended claims 56, 58, 64, and 78; canceled claims 1-55, 69-77, and 87-117; and added new claims 118-119.

The claim amendment received on April 16, 2009 amended claims 56, 58, 62, 78, 86, and 118-119.

Claims 56-68, 78-86, and 118-119 are currently pending and under consideration.

Priority

2. The present application claims benefit of 60/246,851, filed November 8, 2000 and claims foreign priority to UK 0015443.5 filed June 23, 2000 and UK 0026099.2 filed October 25, 2000.

Invention as Claimed

3. A method for screening a first repertoire of antibody heavy chain or antibody light chain polypeptides against a second repertoire of antibody heavy chain or antibody light chain polypeptides to identify those members of the first repertoire which interact with members of the second repertoire comprising (a) arranging the first repertoire in at least one first series of continuous lines wherein each line of said first series comprises a member of said first repertoire and arranging the second repertoire in at least one second series of continuous lines wherein each line of said second series comprises a member of said second repertoire wherein the first and second repertoires form an array wherein a plurality of said first series of continuous lines intersects with a plurality of said second series of continuous lines and wherein a plurality of members of the first repertoire are juxtaposed to a plurality of members of the second repertoire and (b) detecting an interaction between the antibody heavy chain or antibody light chain of the

first and second repertoires thereby identifying those members of the first repertoire that interact with members of the second repertoire and variations thereof.

Withdrawn Objections

4. The objection to claims 58-59 and 60 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn in view of applicants arguments.

5. The objection to claims 56-68, 78-86, and 118-119 is withdrawn in view of the claim amendments received on April 16, 2009.

6. The objection to claim 78 is withdrawn in view of the claim amendments received on April 16, 2009.

7. The objection to claim 86 is withdrawn in view of the claim amendments received on April 16, 2009.

Withdrawn Rejections

8. The rejection of claim 118 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn in view of the claim amendments received on April 16, 2009.

9. The provisional rejection of claims 56-68 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11, 17, and 54-70 of copending Application No. 10/008,571 is withdrawn in view of the ABN of the application.

Maintained Rejections

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 56-68, 78-86, and 118-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feldstein et al. U.S. Patent 6,192,168 filed April 9, 1999; Dower et al. U.S. Patent 5,427,908 issued June 27, 1995; and McCafferty et al. U.S. Patent 5,969,108 issued October 19, 1999.

For present claims 56-57, 62-63, 65-68, and 86, Feldstein et al. teach a microfluidic device for multianalyte interactions wherein a multimode waveguide (i.e. solid surface) is paired with a fluidic cell, flow chamber, or flow cell to perform multianalyte and multisample assays comprising flowing a first set of reagents into multiple channels (i.e. continuous lines) wherein the first set of reagents is deposited on the waveguide, then placing another set of channels perpendicular (i.e. intersection, juxtaposed) to the first set of deposited reagents and flowing a second and/or third set of reagents through the channels (i.e. applied to single support of waveguide wherein in the upper channels are utilized for containing fluid to prohibit mixing)

wherein the first, second, and/or third set of reagents can interact (please refer to the entire specification particularly the abstract; Figures 7a-7b and 8a-8b; columns 3-13; claims 1-31).

For present claims 58-61 and 64, Feldstein et al. teach antibodies and antigens (i.e. heavy and light chains; please refer to the entire specification particularly column 6, lines 37-67; column 7, lines 1-7; columns 10-12; claim 7).

However, Feldstein et al. does not teach a first repertoire of antibody heavy chains and a second repertoire of antibody light chains (i.e. antibodies utilized are multimers).

For present claims 56, 59-61, 64, 78-85, and 118-119, Dower et al. teach methods of screening single-chain polypeptides for binding comprising producing a library of antibody light chains and a library of antibody heavy chains, combining the heavy and light chains and screening for antigen binding wherein the antibody heavy and light chains are produced via phage display utilizing bacteria cells for propagation and the heavy and light chains can be expressed by the same phage or different phage (i.e. in situ production; please refer to the entire specification particularly columns 3-5, 14-15; claims 1-17).

However, Feldstein et al. nor Dower et al. teach single chain polypeptides comprising both a VH and VL (i.e. scFv) or dAb (i.e. specifically, VH and VL are taught by Dower et al.).

For present claims 56, 58-61, 78-86, and 118-119, McCafferty et al. teach methods of screening libraries of scFv and dAb for binding utilizing phage display (please refer to the entire specification particularly Figure 1; column 11; Examples 1-48).

The claims would have been obvious because the substitution of one known element (i.e. antibody; multimer taught by Feldstein et al.) for another (i.e. separate VH and VL, scFv, or dAb taught by Dower et al. and/or McCafferty et al.; utilization of scFv in sandwich assay taught by

Feldstein et al.) would have yielded predictable results (i.e. VH-VL binding, antibody-antigen binding, etc.) to one of ordinary skill in the art at the time of the invention. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

Arguments and Response

12. Applicants' arguments directed to the rejection under 35 USC 103 (a) as being unpatentable over Feldstein et al., Dower et al., and McCafferty et al. for claims 56-68, 78-86, and 118-119 were considered but are not persuasive for the following reasons.

Applicants contend that Feldstein et al. do not teach a repertoire of molecules or repertoires of antibody heavy or light chain polypeptides and no mention of the arrangement of the repertoires as specified in the present claims. Applicants contend that Dower et al. teach bacteriophage expression vectors to express Fabs and to then screen the Fabs against ligands of interest (i.e. Dower et al. does not teach continuous lines). In addition, applicants assert that Dower et al. is in a different field than Feldstein et al. and that there is no motivation Dower et al. to adapt the teachings of Feldstein et al. Furthermore, applicants contend that McCafferty et al. does not teach screening two repertoires against each other.

Applicants' arguments are not convincing since the teachings of Feldstein et al., Dower et al., and McCafferty et al. render the method of the instant claims *prima facie* obvious.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Feldstein et al. is nonanalogous art with Dower et al. and McCafferty et al. and that Feldstein et al., Dower et al., and McCafferty et al. is nonanalogous art with the presently claimed invention, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Feldstein et al., Dower et al., McCafferty et al., and the presently claimed invention are drawn to the "supergen" of screening assays and the "subgen" of antibody-antigen screening.

Feldstein et al. teach utilizing a waveguide device for antibody screening wherein continuous lines (i.e. rows of channels of waveguide device perpendicular or overlapping other rows of channels of the waveguide device) are utilized (i.e. see the entire reference particularly the Figures and columns 4-6, 9-10, 12-13; claims 1, 7). Dower et al. teaches forming antibodies by contacting various VH with various VL and then screening the antibody for antigen binding (please refer to the entire reference particularly columns 8-10). McCafferty et al. teach dAbs (please refer to the entire specification particularly Figure 1; column 11). Therefore, Dower et al. is being utilized to show that the prior art taught production of antibodies via association of various VH with various VL to produce a library which can subsequently be screened and McCafferty et al. is being utilized to show that the prior art taught dAbs.

The claims would have been obvious because the substitution of one known element (i.e. antibody; multimer taught by Feldstein et al.) for another (i.e. separate VH and VL, scFv, or dAb taught by Dower et al. and/or McCafferty et al.; utilization of scFv in sandwich assay taught by

Feldstein et al.) would have yielded predictable results (i.e. VH-VL binding, antibody-antigen binding, etc.) to one of ordinary skill in the art at the time of the invention. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

13. Claims 56-68, 78-86, and 118-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rowe et al. Anal. Chem. 71(2): 433-439, 1999 (supplied by applicants in IDS); Stevens et al. U.S. Patent 6,485,943 filed March 22, 1999; and McCafferty et al. U.S. Patent 5,969,108 issued October 19, 1999.

For present claims 56-57, 62-68, and 86, Rowe et al. teach methods of producing two-chain or three-chain polypeptides comprising utilizing an array immunosensor wherein vertical channels comprise antibodies and adding samples flowed through horizontal channels (first repertoire and/or second repertoire) wherein the vertical and horizontal channels are at 90° angles (please refer to entire reference particularly Figure 1; experimental section).

However, Rowe et al. does not specifically teach utilizing VH or VL in separate channels (i.e. multimer antibodies are utilized).

For present claims 59-61, Stevens et al. teach methods of making recombinant antibody subunit dimers including VH-VH and VL-VL and screening against antigen comprising providing VH and/or VL and interacting the VH and/or VL (please refer to entire specification particularly abstract; column 4, lines 44-67; column 5, lines 1-9; column 6, lines 20-41; column 7, lines 23-36; columns 9-10).

However, neither Rowe et al. nor Stevens et al. teach dAb (i.e. specifically, VH and VL are taught by Stevens et al.) or phage display.

For present claims 58-61, 78-86, and 118-119, McCafferty et al. teach methods of screening libraries of scFv and dAb for binding utilizing phage display and propagation in bacterial cells (please refer to the entire specification particularly Figure 1; column 11; Examples 1-48).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of producing two-chain or three-chain polypeptides comprising utilizing an array immunosensor taught by Rowe et al. with the VH-VH or VL-VL taught by Stevens et al. and the dAb and phage display taught by McCafferty et al.

One having ordinary skill in the art would have been motivated to do this because Rowe et al. teach that immunosensors are easy to use, provide rapid assay times, have sensitivity comparable to ELISA, and can be utilized to study multianalyte binding (please refer to introduction and conclusion sections). In addition, Stevens et al. teach homologous dimerization of antibody subunits and altering amino acid sequences in the interfacial segments to improve yields of Fab and Fv products and studying the interactions via dimerization assays/screens (please refer to columns 4-5).

One of ordinary skill in the art would have had a reasonable expectation of success in the modification of the method of producing two-chain or three-chain polypeptides comprising utilizing an array immunosensor taught by Rowe et al. with the VH-VH or VL-VL taught by Stevens et al. and the dAb and phage display taught by McCafferty et al. because Rowe et al. teach utilizing immunosensors to study multianalyte interactions (e.g. VH, VL, antigen, dimmers, trimers; please refer to conclusion).

Moreover, the claims would have been obvious because the substitution of one known element (i.e. antibodies taught by Rowe et al. and Stevens et al.) for another (i.e. antibodies displayed via phage as taught by McCafferty et al.) would have yielded predictable results (i.e. VH-VL binding, antibody-antigen binding, etc.) to one of ordinary skill in the art at the time of the invention. See *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

Therefore, the modification of the method of producing two-chain or three-chain polypeptides comprising utilizing an array immunosensor taught by Rowe et al. with the VH-VH or VL-VL taught by Stevens et al. and the dAb and phage display taught by McCafferty et al. render the instant claims *prima facie* obvious.

Arguments and Response

14. Applicants' arguments directed to the rejection under 35 USC 103 (a) as being unpatentable over Rowe et al., Stevens et al., and McCafferty et al. for claims 56-68, 78-86, and 118-119 were considered but are not persuasive for the following reasons.

Applicants contend that the combination of Rowe et al., Stevens et al., and McCafferty et al. is unpredictable. Applicants contend that Rowe et al. relates to screening of a final product/analyte by a specific antibody and does not describe or suggest use of any repertoires of molecules and of screening these against each other nor does it mention a checkerboard type screening of the interactions as described in the current application. In addition, applicants contend that Stevens et al. teach methods of making recombinant antibody dimers (i.e. different from Rowe et al. because Rowe et al. teach utilizing an immunoassay using an immunosensor for detection).

Applicants' arguments are not convincing since the teachings of Rowe et al., Stevens et al., and McCafferty et al. render the method of the instant claims *prima facie* obvious.

In response to applicant's argument that Rowe et al. is nonanalogous art with Stevens et al. and McCafferty et al. and that Rowe et al., Stevens et al., and McCafferty et al. is nonanalogous art with the presently claimed invention, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Rowe et al., Stevens et al., McCafferty et al., and the presently claimed invention are drawn to the "supergen" of screening assays and the "subgen" of antibody-antigen screening.

Rowe et al. teach antibody screening utilizing channels of a flow chamber (see the entire reference particularly Figure 1). Stevens et al. teach production of antibodies via combining various VH with various VL and then screening for antigen binding (please refer to the entire reference particularly column 4). McCafferty et al. teach dAb (please refer to the entire specification particularly Figure 1; column 11). Therefore, Stevens et al. is being utilized to show that the prior art taught production of antibodies via association of various VH with various VL to produce a library which can subsequently be screened and McCafferty et al. is being utilized to show that the prior art taught dAbs. Since VH and VL binding is predictable and antibody-antigen binding is predictable in the art, the references can be combined. Additional references regarding the predictability will be provided upon request by the applicants.

See the motivation statements in the above rejection.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., checkerboard type screening) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is noted that "juxtaposed" is "defined" in the present specification as the following (see pages 3 and 11 of the present specification):

According to the invention, juxtaposition can be arrived at by, for example, creating a series of lines for each of the two repertoires, which intersect one another. The lines can be straight, substantially parallel lines, or curves, or combinations thereof; the only restriction is that all members of the first repertoire should be able to interact with all members of the second repertoire. Examples of complementary configurations include straight parallel lines, disposed at an angle to straight parallel lines; concentric circles or polygons, used together with a star of radial lines. The skilled person will be able to imagine many other systems being used to achieve a similar spatial configuration of the repertoire members according to the invention, all being characterised by the dispensation of some form of continuous line, stream, channel or flow corresponding to each member of the first repertoire, all of which has the ability to intersect all lines, streams, channels or flows corresponding to all members of the second repertoire. These include tubes for each member of the first repertoire which intersect tubes of the second repertoire, or channels cut in a solid material down which individual repertoire members can flow. Therefore, according to a second aspect of the invention, there is provided a method wherein members of the both the first repertoire and the second repertoire are arranged in a series of lines, channels or tubes, each containing a member of the first or second repertoires such that the lines, channels or tubes corresponding to the first repertoire and those corresponding to the second repertoire are contacted with one another so that all members of the first repertoire are juxtaposed with all members of the second repertoire.

"Juxtaposition", in the context of the present invention, includes but is not limited to physical 3D contact. Two or more repertoires according to the invention can be juxtaposed such that the molecules are capable of interacting with one another in such a manner that the sites of interactions between the members of the repertoires can be correlated with their position. Alternatively, the repertoires can be juxtaposed with one another and with a target molecule such that the members of the repertoires interact with one another and then together interact with a target molecule.

Double Patenting

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claims 56-68, 78-86, and 118-119 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10, 12, and 14-44 of copending Application No. 10/161,145. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the present invention and the invention of U.S. application 10/161,145 are drawn to methods comprising arraying a plurality of polypeptides on a support which can be single-chain or two-chain, arraying a second plurality of polypeptides/targets on a support which can be single-chain, and juxtaposing the supports so that either two-chain or three-chain polypeptides are produced.

For present claims 56-68, 78-86, and 118-119, U.S. application 10/161,145 claim immobilizing target molecules on a first support wherein the target molecules can be protein, polypeptide, amino acid, whole cell or cell extract (e.g. antigen, single-chain polypeptide, VH,

VL), arraying a plurality of polypeptides on a second support wherein the polypeptides can be antibodies (e.g. VH, VL, VH-VL, VH-VH, VL-VL), juxtaposing the first and second supports wherein binding can occur (e.g. making a two-chain or three-chain polypeptide library) and phage display with propagation in bacteria (please refer to claims 1-10, 12, and 14-44).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Arguments and Response

17. Applicants' arguments directed to the rejection on the ground of nonstatutory obviousness-type double patenting as being unpatentable over 10/161,145 for claims 56-68, 78-86, and 118-119 were considered but are not persuasive for the following reasons.

Applicants request that the rejection be held in abeyance.

Applicants' arguments are not convincing since the claimed invention of 10/161,145 renders obvious the method of the instant claims. In addition, while a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated, the present is a rejection and will not be held in abeyance (see MPEP § 714.02).

18. Claims 56-68, 78-86, and 118-119 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-23 of copending Application No. 11/413,427. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the presently claimed invention and the invention as claimed in U.S. application 11/413,427 are drawn to methods comprising arranging

a first repertoire in at least one first series of continuous lines, arranging a second repertoire in at least one second series of continuous lines forming an array wherein the first and second lines intersect thereby juxtaposing the first and second repertoires.

For present claims 56-68, 78-86, and 118-119, U.S. application 11/413,427 claims a method comprising arranging a first repertoire in at least one first series of continuous lines wherein the first repertoire can be VH or VL, arranging a second repertoire in at least one second series of continuous lines wherein the second repertoire can be VH or VL, forming an array wherein the first and second lines intersect thereby juxtaposing the first and second repertoires, optionally contacting the array with target (e.g. antigen), and allowing binding to create two- or three-chain polypeptides, dAb, phage display, etc. (please refer to claims 1 and 3-23).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Arguments and Response

19. Applicants' arguments directed to the rejection on the ground of nonstatutory obviousness-type double patenting as being unpatentable over 11/413,427 for claims 56-68, 78-86, and 118-119 were considered but are not persuasive for the following reasons.

Applicants request that the rejection be held in abeyance.

Applicants' arguments are not convincing since the claimed invention of 11/413,427 renders obvious the method of the instant claims. In addition, while a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated, the present is a rejection and will not be held in abeyance (see MPEP § 714.02).

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Future Communications

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMBER D. STEELE whose telephone number is (571)272-5538. The examiner can normally be reached on Monday through Friday 9:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amber D. Steele/
Primary Examiner, Art Unit 1639

June 8, 2009